

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
and)	
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Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the)	
Telecommunications Act of 1996)	

**COMMENTS OF IP COMMUNICATIONS CORPORATION ON FIFTH FURTHER
NOTICE OF PROPOSED RULMAKINNG IN CC DOCKET NO. 96-98**

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On August 10, 2000, the Federal Communications Commission (“FCC”) issued its Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (“*NGDLC Unbundling Notice*” or “Notice”) and published in __ Fed. Reg. ____ (_____, 2000). In that notice, the FCC seeks comment regarding the unbundling of next generation digital loop carriers (“NGDLC”). IP Communications Corporation (“IP”) is a Digital Subscriber Line (“DSL”) Competitive Local Exchange Carrier (“CLEC”) (collectively referred to as a “DLEC”) that will be immediately affected by the FCC’s *NGDLC Unbundling Notice* and the eventual order on that notice.

INTRODUCTION AND SUMMARY

The *NGDLC Unbundling Notice* seeks comment regarding whether the Commission’s rules should be modified to reflect a national policy to require incumbent local exchange carriers (“ILECs”) to unbundled NGDLCs. The proper unbundling of NGDLCs is critical to meeting the parity requirements of FTA § 251, opening markets to competition as required by FTA § 271, and the advancement of advanced services as sought by FTA § 706. As the FCC noted in the *NGDLC Unbundling Notice*, NGDLCs “convert and multiplex signals originating at customers’

premises for transport back to the central office, and demultiplex and convert the signals coming from a central office for transport to customers' premises.”¹ On the positive side, this architecture extends fiber technologies further into the field having the effect of shortening the copper facility serving a particular customer and therefore making advanced services available to customers that otherwise would not currently have access to certain DSL technologies. On the negative side, the architecture if not properly unbundled and managed, can be used to freeze DSL competitors out of the market. Steps, such as the removal of copper from the central office to the customers premises, i.e. Home Run Copper, placing limitations on the services that can be provisioned out of a DLC, and asymmetric access to information, are a sample of the ways in which the architecture can be used to discriminate and/or limit the forms of advanced services available to consumers. That said, the specificity contained in the FCC's notice demonstrates that the FCC is developing an understanding of the issues created by this architecture and is asking the right questions to obtain the necessary information to make an informed decision.

IP will show in these comments that NGDLCs provide a mix of voice and advanced services, that it is the combined attributes of the NGDLCs that make them economical, and that competitors will be severely impaired if they are not made available to competitors on an unbundled basis, *including unbundling of the NGDLC platform on a combined basis*. IP will also provide comment regarding the specific unbundling questions posed by the FCC. As will be made clear in these comments, to meet the goals of sections 251, 271 and 706, the FCC should design its unbundling rules to assure the maximum availability of advanced services as well as the maximum variety of advanced services where availability will not be disproportionately affected by such variety.

¹ NGDLC Notice at ¶ 118.

IP in particular is affected by this proceeding. IP is a DLEC whose business plan has a very heavy residential focus. As such, IP is looking for any and all mechanisms to expand its ability to provide advanced services to the broadest level of end users. If unbundled correctly, NGDLCs provide a tremendous opportunity to make competitive DSL services broadly available. To answer the FCC's question at paragraph 118, the deployment of this new network architecture necessitates modification/clarification of the Commission's local competition rules pertaining to unbundled transport, loops, and subloops. To a large extent, what is necessary is clarification. As will be discussed, IP believes that to a large extent NGDLCs were unbundled in the *UNE Remand Order*.² Still, the language is not so clear that CLECs will not be forced to litigate the issue in all 50 states. Moreover, the details of such unbundling were not addressed in the *UNE Remand Order*. A national policy stating the minimum unbundling requirements will avoid unnecessary state-by-state litigation while not foreclosing further unbundling as new ideas and technologies are developed.

I. LOOP ELECTRONICS – e.g. CLASSIFICATION OF SPLITTERS – AND UNBUNDLING DEFINITIONS

A. Classification of Splitters

Beginning at Paragraph 119 and continuing through Paragraph 122, the FCC seeks comment on the nature and type of electronics that are or may be attached to a loop. As the FCC recognizes, various electronics are included within the loop facility, i.e. the loop is not limited to the copper cabling but includes other devices such as filters, load coils, devices that allow two voice providers to share the same copper pair (“DAMLs”), etc. Similarly, splitters should be considered part of the loop facility. While this comment requires a fresh look at an issue that

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 at ¶ 304 (rel. Nov. 5, 1999) (“*UNE Remand Order*”).

was addressed in the FCC's *Line Sharing Order*³, experience since that order supports such a review.⁴ The splitter itself is a passive piece of equipment, just like any filter placed on a loop, which is used to make the features of that loop accessible, just like a DAML. The fact that a DAML is used to combine two voice users on a loop and a splitter is used to combine two functionalities on the loop for the same location, is a distinction without a difference. Similarly, just as CLECs can seek the removal of equipment, such a load coils, from an unbundled loop, the CLEC are able to request the addition of equipment that increases loop functionality. For example, when a CLEC orders an ISDN-capable loop, the CLEC is effectively requesting the adding of repeaters to the loop, if necessary, to achieve the loop functionality it desires.⁵ The ILEC is required to add this equipment to the loop to provide the requested functionality. Additional equipment is also required when a voice provider requests 5db conditioning.

When the CLEC requires the expanded functionality of a loop that is achieved by a splitter, the same requirements should be applied. IP further notes that in Texas, Arbitrators reviewing line sharing issues have reached the same result.⁶ In that arbitration, the Arbitrators held that splitters should be considered part of the loop.

³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order in CC Docket No. 96-98, Third Report and Order in CC Docket No. 98-147, CC Docket No. 98-147, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

⁴ As an example, IP has experienced situations where an ILEC has incorrectly informed IP line shared customers that IP caused the customers' voice outage. Because IP uses ILEC-owned splitters, IP was able to prove that the ILEC representation was incorrect. Had IP used its own splitters, IP could have been subjected to wrongful and expensive litigation do to misrepresentations of an ILEC. If a line sharing DLEC chooses to provide its own splitters and subject itself to such an outcome for business reasons, it should be able to do so. However, a line sharing DLEC should never be forced into such a potential liability when it simply wishes to access the loop's HFPL functionality.

⁵ *UNE Remand* at ¶ 175.

⁶ Cite to Line splitting order.

B. Unbundling Definition

IP supports the FCC modifying its rule to only exclude from unbundling “those electronics used ‘exclusively’ or ‘primarily’ in the provision of advanced services”.⁷ Such a rule clarification would properly clarify that mixed-use equipment should be unbundled. When dealing with mixed-use equipment, the ILEC gains an unfair competitive advantage because it has the ability to benefit from economies created by the consolidation of voice and data functionality in a way that will not be available to CLECs if CLECs are not given a similar opportunity through unbundling. For example, NGDLCs are not placed to provide advanced services exclusively. In SBC’s territory, for example, in a typical NGDLC configuration, only one third of the channel banks of an NGDLC are capable of providing advanced services. The other two-thirds are designed to provide plain old telephone service (“POTS”) only. Consequently, SBC, and presumably all ILECs when deploying NGDLCs, benefit from the economies of scale that come from deploying equipment that leverages the ILEC’s existing market dominance in voice markets to subsidize their advanced service deployment strategy.⁸

This Commission stated this point best in its *UNE Remand Order*. In that order, the FCC stated that “We continue to believe that one important purpose of the unbundling provisions of the Act is to permit competitive LECs to compete with the same economies as the incumbents, especially in the early stages of competition, when their networks are limited in their reach and their customer bases are necessarily small.”⁹ CLECS will be severely impaired if they do not

⁷ NGDLC Notice at ¶ 122.

⁸ To be clear, IP does not complain about the deployment of equipment that provides advanced services to some customers and POTS to others. By building equipment that benefits from economies of scale, the overall costs of deployment are minimized. However, the leveraging of the existing customer base in voice markets helps explain why unbundling is necessary if an open market is to be achieved.

⁹ *UNE Remand* at ¶ 86 citing the First Report and Order in CC 96-98, 11 FCC Rcd at 15508-091 at ¶¶ 10-11.

receive unbundled access. In the UNE remand, the FCC noted in the context of packet switching that:

In other segments of the market, namely, residential and small business, we conclude that competitors may be impaired in their ability to offer service without access to incumbent LEC facilities due, in part, to the cost and delay of obtaining collocation in every central office where the requesting carrier provides service using unbundled loops. We conclude, however, that given the nascent nature of the advanced services marketplace, we will not order unbundling of the packet switching functionality as a general matter [i.e. in addition to the limited circumstances discussed above.] (Bracketed portion added.)¹⁰

Clearly, NGDLCs fall within the circumstances suggesting further unbundling in Paragraph 313 of the *UNE Remand Order*. First, the FCC raised a concern that competitors may not be able to reasonably compete for residential and small business customers if packet switching is not unbundled. NGDLCs are being put in place to expand the residential and small business availability of advanced services. The NGDLC network architecture is predominantly designed to serve the residential market. Next in priority to the residential market is the small business market. Consequently, the NGDLC packet switching network element is targeted to the customer classes for which the FCC held out its greatest concern. SBC, for example, has touted Project Pronto as a means to expand the access of advanced services from 40% of its residential customers to 80% of its residential customers.

Secondly, the costs facing CLECs are far greater than that envisioned by the FCC in Paragraph 306 of the *UNE Remand Order*. The FCC's concerns were based on the comparison between the less lucrative residential and small business customer classes and the CLEC's cost to collocate in every central office where service would be provided. NGDLCs, using Project Pronto as an example, create substantially greater costs than the FCC contemplated. Instead of

¹⁰ See *UNE Remand Order* at ¶ 306.

collocating at every central office, under one of the configurations that was proposed to the FCC and CLECs, a CLEC could have been required to interconnect separately at every serving area interface (“SAI”).¹¹ In certain parts of Austin, Texas, for example, there are up to 100 SAIs at a single central office. Hence, competitors based on SBC’s initial design of Project Pronto could have needed to up to 100 additional collocation installations – each to serve a small subset of the office’s potential demand.¹² **At approximately \$500,000 per adjacent collocation, a CLEC could be faced with \$50,000,000 to ubiquitously cover one central office.** Even in situations where CLECs have access to cooper at the remote terminal (“RT”) that houses the NGDLC, the number of RTs per central office can exceed 20. Consequently, a CLEC would be required to collocated in or adjacent to up to 20 RTs as compared to one central office. Moreover, other unforeseen costs will be likely. SBC for example seeks to charge special construction charges making CLECs pay for new copper even though existing copper could lay stranded because of SBC’s decision to hardwire the existing copper to the NGDLC.

Applying these facts to the FCC’s discussion, it is clear that NGDLCs meet the cost/benefit analysis of the impairment test. The necessary step is to clarify that the full NGDLC architecture from the customer’s premises to the central office handoff point must be unbundled on a combined basis. The next step is to review further unbundling requirements and/or appropriate requirements to support nondiscriminatory access. In its *UNE Remand Order* the FCC just stopped short of declaring that requiring CLECs to interconnect in each ILEC central

¹¹ The SAI is also referred to as a feeder distribution interface (“FDI”).

¹² See also page 4 of SBC’s original Investor Briefing regarding Project Pronto which states that SBC will “place or upgrade approximately 25,000 remote terminals” creating “neighborhood broadband gateways to about 1,400 central offices throughout SBC’s 13-state territory”. Thus, using SBC’s numbers, there will on average be almost 18 RTs with NGDLCs per office. Working with an 18 average, a CLEC would still be looking at \$9,000,000 to construct adjacent collocations at an average central office. Moreover, the trend is to add additional RTs to existing central offices rather than new central offices.

office was cost prohibitive, but the effect of NGDLCs is a multiple of times more onerous than requiring CLECs to interconnect at each ILEC central office. Thus in the case of NGDLCs, the impairment test is clearly met. Without unbundling, CLECs will be required to incur substantially higher costs that will make residential and small business customers unservable.

II. NOTICE TO CLECS REGARDING NEW FIBER FACILITIES

CLECs like ILECs require advanced notice to adjust their business plans as the network architecture changes. Without such notice, CLECs will be limited in their ability to plan their businesses. While ILECs will have knowledge of network changes and will be able to adjust their marketing and service offerings to account for future changes, CLECs will be left behind always trying to play catch-up after the fact. Such discrimination is in violation of 251(c). ILECs are required to provide nondiscriminatory access to loops, including their features, functionalities, and capabilities. Without adequate notice, CLECs will not be able to access the functionality of the new loop plant on a parity basis with the incumbent, i.e. it is not helpful to have parity unbundling requirements if the CLEC is a month behind in submitting orders due to the lack of parity information.

Regarding the amount of advanced notice, the CLEC deserves as much advance notice as the ILEC. CLECs should be informed as soon as requests for proposals (RFPs) are issued to vendors, as soon as vendors are selected, and should receive deployment updates contemporaneously with the ILEC receiving them from their vendors. Only with such notice will CLECs be able to engage in near and long term planning at parity with the incumbent.

III. FEATURES, FUNCTIONS, AND CAPABILITIES OF THE SUBLOOP¹³

The features, functions and capabilities of subloop includes all technically feasible transmission speeds and quality of services (QoS) classes such as Constant Bit Rate (CBR) and real time and non-real time Variable Bit Rate (VBR) that exist in the attached electronics. Because the equipment is still in the early stages of deployment, it is too early to say whether the provision of multiple CBR and/or VBR channels, circuits, paths, or connections over the same fiber feeder facility would cause interference or disruptions that could lead to service degradation. All carriers have an interest in assuring that their customers receive quality service. Any ruling should include a policy favoring expanded service options for customers. It should be presumed that any technically feasible feature from the NGDLC is permissible. Should there be concerns raised by ILECs or CLECs that a particular use is degrading the use to others, those ILECs and CLECs should be able to petition the appropriate state regulatory commission seeking authority to prevent a particular use by *any carrier*. The state proceeding would focus on the goals of Section 706 by balancing the benefit of expanding the availability of advanced services generally and the benefit of expanding the availability of a variety of advanced services. Both benefits are consistent with Section 706. Should a situation arise where these two benefits are in conflict, the state commission can balance the relative affects.

NGDLCs are being developed that are capable of providing a variety of transmission speeds and QoS classes. Not only should CLECs be able to access all of these capabilities once an NGDLC is deployed. ILECs should be required to deploy those NGDLCs that have the most robust collection of capabilities. Robust NGDLCs allow for product differentiations. As was experienced with DSL over home run copper loops, ILECs attempted to limit the differentiations that CLECs could provide through a variety of means, particularly spectrum management. This

¹³ ¶ 125.

Commission and state commissions, such as the Texas Public Utility Commission, found such limitations to be discriminatory and in violation of Section 251(c). Today, the topic is NGDLCs but the issues are the same. If ILECs are able to discriminate against CLECs through their choice of equipment, conduct that was rejected as discriminatory for home run copper loops will be allowed in the area of NGDLCs. Using the SBC example, just as many residential customers will be impacted by the decisions relating to NGDLCs as are impacted by the decisions relating to home run copper. As a result, rules need to be in place regarding the cards placed in NGDLCs requiring the placement of newly developed line cards when requested by a CLEC or requested by the ILEC's retail operations.

IV. ACCESS TO FIBER FACILITIES¹⁴

This Commission has already determined that CLECs have broad access the fiber facilities within an ILECs network. CLECs are entitled to dark fiber as UNEs.¹⁵ Moreover, CLECs are entitled to order as UNEs various high capacity loops using fiber capacity.¹⁶ Dark fiber would certainly be one means of completing a circuit where insufficient capacity exists on the current fiber subloop from the RT to the central office. A more efficient solution would be for ILECs to capacity manage the fiber utilization to meet the shared demand of itself, its affiliates, and CLECs. This is precisely what is done with common transport. In the context of common transport, the ILEC is not permitted to discriminate against CLEC traffic because the fiber capacity is at full utilization. Instead, the ILEC expands the shared commodity to meet the traffic demands. Thus the first step should be to augment the equipment to expand capacity

¹⁴ ¶ 126.

¹⁵ UNE Remand at ¶ 174.

¹⁶ UNE Remand at ¶¶ 176-177. For example, CLECs may order high capacity loops which are carried over fiber strands used by other carriers, including the ILEC.

making additional circuits available within the fiber subloop. For example, in the SBC regions, for months CLECs have questioned the deployment of NGDLCs that only have OC3 capacity to carry all data signals from the RT to the central office. CLECs have argued that the network architecture should have an OC-12 depending on the customer base served by an RT so that the network can handle not only the ADSL service of today but also the services of tomorrow.

What should be made clear in the Commission's Order is that the requirement to augment the fiber, as in the common transport example, must not be limited to situations where space is not available in the RT to access dark fiber or locate electronics. The ILEC benefits from sharing its fiber costs with other carriers and the ILEC's POTs service. This sharing of costs includes the fiber component from the RT to the central office. A CLEC should not be impaired by not being able to achieve the same benefits of the economy of scale and scope of the network by having to activate a dedicated fiber strand.

V. CAPACITY MANAGEMENT/NONDISCRIMINATORY MANAGEMENT IS NECESSARY

In paragraph 128, the Commission seeks comment regarding operational issues and modifications to the incumbent's operational support systems. Operationally, CLECs need real-time access to information relating to the capacity utilization of an RT. This information not only would include real-time access to information relating to the availability of ports in the NGDLC for assignment but also includes access to information relating to the utilization of the fiber so a CLEC can determine what achievable service standards can be realized by its customer. Without this capability, CLECs will be prevented from providing realistic expectations to their customers

Regarding test capability, remote access to test capability should continue to be developed and should be available to all carriers on a nondiscriminatory basis. SBC, for example, has committed to developing test capability at its remote terminals and providing CLECs remote access to that capability. Such access should eventually be available through a graphical user interface (GUI) and electronic bonding. The latter is necessary to allow CLECs the ability to integrate this test capability with its other operations in the same manner the ILEC will do for itself. Without such test capability, CLECs will be significantly impaired. CLECs would be required to either dispatch technicians to remote terminals to test subloops. Not only would such a process be unworkable for a carrier with anything over a token volume, the costs would be enormous on a per customer basis precluding the offering of services to the residential market. Similarly, if the CLEC deployed its own test equipment, the cost per customer would be too high to support a residential and small business strategy because the cost would not be shared among all customers service by the NGDSL, regardless of provider. Moreover, multiple test heads would artificially inflate costs and potentially lessen the availability of collocation space.

In paragraph 129 through 131, the Commission seeks comment regarding spare copper. Specifically, the Commission seeks comment regarding ILEC responsibilities relating to “unused loop capacity that is installed and capable of providing service”¹⁷, “whether incumbents should provide notice to competitors before retiring and removing copper facilities”¹⁸, and whether ILECs should receive federal or state approval before removing copper facilities.¹⁹

¹⁷ ¶ 129.

¹⁸ ¶ 130.

¹⁹ ¶ 131.

It is critical that ILECs do not manage their loop plant in an anticompetitive manner. Instead, ILEC management must be on a competitively-neutral, nondiscriminatory basis. The ILEC can conceptionally be thought of as a wholesaler to CLECs as well as the ILEC retail services. A lesser standard would leave room for potential abuse.

There are various areas where the management of copper facilities leads to the potential for abuse and CLEC impairment. For example, CLECs have invested hundreds of millions of dollars placing central office-based advanced service equipment. Such investment were not only supported by CLECs evaluation of the existing loop plant and the capabilities of that plant, such investment was also predicated on the FCC's invitation to invest in such equipment through the FCC's market opining initiatives to enhance the availability of advanced services. The retiring and removing of copper facilities has a discriminatory effect to such CLECs. Most obviously, if home run copper is replaced with fiber-fed DLC systems, i.e. NGDLCs, the market that can be served by the central office equipment diminished. Central office-based DSLAMs, for example, cannot be used to serve a customer served by an NGDLC. Second, to date, ILEC-proposed pricing²⁰ for NGDLC capabilities are substantially greater than similar capabilities through home run copper. Third, CLECs will likely be faced with the design limitations facilitated by ILECs through there vendor relationships that will limit the diversity of services and quality of service that can be provided to end users.

All of these factors create a disproportionate impairment for CLECs. Without an effective "nondiscriminatory" management policy, ILECs will be able to simply balance the costs and benefits to their retail operations when making copper retirement decisions. Additionally, in the benefits column would be the added difficulty and costs levied on the ILEC's competitors, i.e. the CLECs. The ILEC could choose, looking solely at the retail effects and impairment to CLECs, that the ILEC benefits sufficiently from blocking CLEC business strategies that stranding a portion of its central office-based equipment is acceptable. Regarding the potentially higher UNE costs, the ILEC will balance any higher costs incurred on the retail

²⁰ SBC as the example.

side with the fact that its competitors will be incurring those hire costs. In fact, the ILEC will likely consider the CLECs as helping to finance the newly deployed equipment. So as copper is retired or removed, CLECs service options are limited such that they are forced to finance the ILEC's new deployment.

The service limitations will have the most direct customer impact. If the ILEC is successful forcing CLECs from home run copper to NGDLCs, CLEC offerings will be limited by the functionality of the NGDLC as well as any policy limits imposed by the ILEC. What is clear in the SBC territory, for example, is that SBC was not viewing its product decisions in the capacity of a wholesaler. It never consulted with the wholesale users of its NGDLC architecture to determine what vendor equipment would be appropriate nor what functionalities it should seek from its vendor. The concern is particularly acute in SBC's territory since SBC is not allowed to provide advanced services through its ILECs. Given that the SBC ILEC role in the advanced services market is as a wholesale provider only, it seems clear that the wholesale provider should seek input from the wholesale customers prior to deployment. Since SBC did not do that, CLECs can only assume that the interests of SBC's advanced services affiliate received a higher value than that of CLECs. Also, IP notes that the architecture as initially offered by SBC was, in fact, tailored to the needs of the SBC advanced services affiliate. That affiliate only provides ADSL, and the NGDLC being deployed only had ADSL capability. SBC argued that the limitation was not of its making but was a vendor limitation. However, it is clear that SBC's vendor, Alcatel, focused its development on the needs/requirements of its client, SBC. Consequently, the ILECs have substantial control over which equipment capabilities are created. The SBC experience demonstrates that a strict enforcement of the "nondiscriminatory" management policy must go beyond the copper retirement issues but instead must extend to equipment deployment, vendor selection, and vendor requests. As a process, IP has suggested that CLEC involvement through a users' forum with the applicable ILEC would self-manage the "nondiscriminatory" management policy without constant litigation. In the SBC territory, for example, similar forums are in place regarding trunking issues, operational support systems

(OSSs), change management, loop qualification, and other general issues. Although these groups do not avoid all litigation, most issues are addressed in these forums without FCC or state commission intervention. Moreover, when litigation is required, the issues are well defined through these forums making those litigated proceedings more efficient and effective. If such a process is followed for the removal/retirement of copper loops, for example, such removal/retirement could be implemented without being inconsistent with section 251(c)(3) obligations. However, if such a process is not followed, given the ILEC incentives to favor its business strategy over that of its competitors, such a removal/retirement would not be consistent with section 251(c)(3).

The potential for ILECs to sell retired copper to competitors does not in any way offset the harms improper retirement would cause. First, the intrinsic value of a particular bundle of copper is that copper's location within the ILEC's network. Handing that copper to a CLEC would largely be without value. First, the CLEC would be required to incur substantial interconnection costs to make that copper accessible to the CLEC's other equipment. The CLEC that already has central office based equipment collocated in the ILEC central office would need to interconnect that copper with other copper simply to carry the copper segment back to the same location where the copper segment was connected before it was "retired". Second, the copper would be in the hands of one CLEC. The unbundling requirement, in the first place, is an attempt to spread the economies of scale of the ILEC's network across all telecommunications providers. A CLEC is generally not going to have a capacity need for a large copper capacity segment on its own. The genius of unbundling is that loop plant is economically used by ILECs and CLECs alike. Finally, even if the purchasing CLEC leases portions of the copper to other CLECs, the previous efficiencies will not be regained. Simply to facilitate the transaction, CLECs will need additional OSSs to order copper from one another. Second, substantial central office cross-connection work will be required of the ILEC to route the copper to the appropriate CLEC collocations. Yet, the ILEC will not be able to perform the work because it will not have the copper inventory in its back office systems. Moreover, ILECs have historically fought

unescorted access to the ILEC main distribution frame (MDF) to allow CLECs to provision the cross connections themselves.

ILECs making a retirement decision are aware of the inability of CLECs to broadly compete with such transferred copper. Thus, it is an offer without value that does not solve the concerns regarding the proper management of loop plant and the NGDLC architecture as a whole.

VI. CROSS CONNECTION

In paragraphs 132 through 133, the Commission seeks comment regarding cross connection requirements within the new NGDLC architectures. First, to reiterate, this is not equipment being developed in a vacuum. Vendors meet with the large ILECs regularly to determine what product the ILECs want to deploy. The vendors then prioritize their development to meet their customers' needs. This docket is an opportunity for the FCC to assure that these relationships are not used by ILECs to *cause* the precise technical limitations that they will use as a shield later. The "cross connection at the RT" issue is only an example of this concern.

At paragraph 133, the Commission asks about the "technically feasible points for accessing the copper distribution portion of the loop and the fiber feeder portion of the loop at remote terminal locations." With regard the NGDLCs, the copper is technically feasible for interconnection at all points the FCC would deem appropriate. This is new equipment. Issues such as "hard splicing" of copper to RTs should be irrelevant. In a forward looking multi-user network, ILECs would not have copper hard wired to an RT. Such a configuration might be appropriate in a single provider world but in a world of multiple carriers, equipment would be designed to efficiently use cross connect panels. If the FCC's query related to equipment that

predated the FTA, such existing equipment limitations that are in place even though it was technically feasible to deploy multi-user friendly equipment, may deserve a consideration depending on the circumstance. However, for new equipment, such as NGDLCs, limitations in specifically deployed equipment should be irrelevant. Any such consideration would codify anticompetitive deployment decisions. Instead, the proper consideration is whether it is technically feasible to perform the requested function without regard to the specific equipment limitation. Such an analysis incents the ILEC to make fair “nondiscriminatory” development and deployment decisions. To answer the latter query, it is certainly technically feasible to have cross connect capability at a remote terminal without hardwiring.

SBC, for example, did not make a nondiscriminatory deployment decision in this regard. Its RTs are hardwired. SBC has proposed to “jerry rig” its network to, at a very small extent, minimize the level of CLEC impairment. It does so, however, with a combination of steps that will create provisioning problems and substantially increase CLEC costs with unnecessary special construction charges. The solution is to require nondiscriminatory deployment while providing SBC a brief, but reasonable, timeline to augment its deployed equipment to approximate what it should have done in the first instance.

CONCLUSION

Unless the Commission ***quickly and forcefully*** clarifies that NGDLCs must not only be unbundled but must be deployed and managed in a nondiscriminatory manner, ILECs will obtain the same unfair and discriminatory head start with this infrastructure that the FCC recognized in the context of line sharing in its *Line Sharing Order*. Additionally, IP respectfully requests that the Commission make clear in its order and rules that further unbundling can and should be

addressed on an expedited basis by the states upon CLEC request. While the FCC's notice demonstrates a high level of detailed knowledge by the Commission, it will not be until the initial development that the full array of issues will be knowable.

Respectfully submitted,

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